

SUPPRESSED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

V.

LUCINDA FRANEK

Defendant.

4:13CB 00133RWS
No. FILED UNDER SEAL

FILED
APR 10 2013
U. S. DISTRICT COURT
EASTERN DISTRICT OF MO

INDICTMENT

COUNT 1

(FAILURE TO ACCOUNT FOR AND PAY OVER EMPLOYMENT TAX)

The Grand Jury charges that:

1. At all times relevant to this Indictment, Defendant LUCINDA FRANEK was a resident of Beaufort, Missouri and the President of Rick Franek Contracting, Inc. (RFCI), a custom home building business.
2. At all times relevant to this Indictment, defendant LUCINDA FRANEK was married to Rick Franek.
3. At all times relevant to this Indictment, Defendant LUCINDA FRANEK and her husband Rick Franek operated RFCI, with Defendant LUCINDA FRANEK being responsible for the financial aspects of RFCI, including payroll duties, and ensuring that the payroll taxes were timely filed and paid to the Internal Revenue

Service.

4. At all times relevant to this Indictment, RFCI withheld taxes from its employees' paychecks, including federal income taxes, medicare and social security taxes (often referred to as Federal Insurance Contribution Act or "FICA" taxes). These taxes will be referred to in this Indictment collectively as "payroll taxes."
5. At all times relevant to this Indictment, RFCI was required to make deposits of the payroll taxes to the Internal Revenue Service on a periodic basis. In addition, RFCI was required to file, following the end of each calendar quarter, an Employer's Quarterly Federal Income Tax Return (Form 941), setting forth the total amount of wages and other compensation subject to withholding, the total amount of income tax withheld, the total amount of social security and Medicare taxes due, and the total tax deposits.
6. Defendant LUCINDA FRANEK, the individual at RFCI who handled RFCI's payroll and tax reporting duties, was a "responsible person," that is, she had the corporate responsibility to collect, truthfully account for, and pay over RFCI's payroll taxes.
7. In the years 2008 and 2009, defendant LUCINDA FRANEK had RFCI withhold payroll taxes from RFCI's employees' paychecks. In addition, defendant LUCINDA FRANEK filed the Form 941 for RFCI for the third and fourth quarters of 2008, as well as for the first, third and fourth quarters of 2009, but defendant LUCINDA FRANEK failed to remit payroll taxes that were owing from RFCI to the Internal Revenue Service.

8. Altogether, during the five calendar quarters alleged in Counts 1 - 5 of this Indictment, RFCI failed to pay over approximately \$123,659.15 in payroll taxes as set forth below:
 - a. Third Quarter of 2008 \$40,876.81
 - b. Fourth Quarters of 2008 \$46,383.61
 - c. First Quarter of 2009 \$13,668.66
 - d. Third Quarter of 2009 \$ 4,295.10
 - e. Fourth quarter of 2009 \$18,434.97
9. In 2009, defendant LUCINDA FRANEK and her husband signed and filed joint form 1040 Individual Income Tax Returns for the years 2006, 2007, and 2008 with the Internal Revenue Service as husband and wife, but defendant LUCINDA FRANEK has failed to pay their 2006, 2007, and 2008 individual income taxes.
10. Altogether, during the years 2006, 2007, and 2008 alleged in Counts 6 - 8 of this Indictment, defendant LUCINDA FRANEK has failed to pay over approximately \$53,601.04 in individual income taxes as set forth below:
 - a. The year 2006 \$19,259.04
 - b. The year 2007 \$33,317.00
 - c. The year 2008 \$ 1,025.00
11. Despite not remitting employment taxes in 2008 and 2009, or paying her individual income taxes for the years 2006, 2007, and 2008, Defendant LUCINDA FRANEK made the following transactions, and incurred the following expenses, through RFCI and with personal finances:
 - a. Defendant LUCINDA FRANEK paid her husband and herself over

\$300,000 in wages between 2005 and 2008.

- b. Defendant LUCINDA FRANEK provided herself rental payments from RFCI of over \$100,000 between 2005 and 2009.
- c. Defendant LUCINDA FRANEK provided loans to herself of over \$200,000 from 2005 through 2009.
- d. Defendant LUCINDA FRANEK provided loans to her business Silver Stirrup Stables, L.L.C. of over \$70,000 from 2007 through 2009.
- e. Defendant LUCINDA FRANEK and her husband incurred a number of expenses for Silver Stirrups Stables, L.L.C., and for personal vacations, hunting trips, and other items during this time period.

12. On or about October 31, 2008, in the Eastern District of Missouri,

LUCINDA FRANEK,

the defendant herein, who was a resident of Beaufort, Missouri and the President of Rick Franek Contracting, Inc. (RFCI), a corporation in the Eastern District of Missouri, and who deducted and collected from the total taxable wages of RFCI's employees federal income taxes and Federal Insurance Contributions Act taxes, did willfully fail to truthfully account for and pay over to the Internal Revenue Service all of the federal income taxes and Federal Insurance Contributions Act taxes withheld and due and owing to the United States of America in the amount of \$40,876.81 for the quarter ending September 30, 2008.

In violation of Title 26, United States Code, Section 7202.

COUNT 2

(FAILURE TO ACCOUNT FOR AND PAY OVER EMPLOYMENT TAX)

The Grand Jury further charges that:

13. The allegations contained in paragraphs 1 through 11 of Count 1 of this Indictment are restated and incorporated herein.
14. On or about January 31, 2009, in the Eastern District of Missouri,

LUCINDA FRANEK,

the defendant, who was a resident of Beaufort, Missouri and the President of Rick Franek Contracting, Inc. (RFCI), a corporation in the Eastern District of Missouri, and who deducted and collected from the total taxable wages of RFCI's employees federal income taxes and Federal Insurance Contributions Act taxes, did willfully fail to truthfully account for and pay over to the Internal Revenue Service all of the federal income taxes and Federal Insurance Contributions Act taxes withheld and due and owing to the United States of America in the amount of \$46,383.61 for the quarter ending December 31, 2008.

In violation of Title 26, United States Code, Section 7202.

COUNT 3

(FAILURE TO ACCOUNT FOR AND PAY OVER EMPLOYMENT TAX)

15. The allegations contained in paragraphs 1 through 11 of Count 1 of this Indictment are restated and incorporated herein.
16. On or about April 30, 2009, in the Eastern District of Missouri,

LUCINDA FRANEK,

the defendant, who was a resident of Beaufort, Missouri and the President of Rick Franek

Contracting, Inc. (RFCI), a corporation in the Eastern District of Missouri, and who deducted and collected from the total taxable wages of RFCI's employees federal income taxes and Federal Insurance Contributions Act taxes, did willfully fail to truthfully account for and pay over to the Internal Revenue Service all of the federal income taxes and Federal Insurance Contributions Act taxes withheld and due and owing to the United States of America in the amount of \$13,668.66 for the quarter ending March 31, 2009.

In violation of Title 26, United States Code, Section 7202.

COUNT 4

(FAILURE TO ACCOUNT FOR AND PAY OVER EMPLOYMENT TAX)

17. The allegations contained in paragraphs 1 through 11 of Count 1 of this Indictment are restated and incorporated herein.

18. On or about October 31, 2009, in the Eastern District of Missouri,

LUCINDA FRANEK,

the defendant, who was a resident of Beaufort, Missouri and the President of Rick Franek Contracting, Inc. (RFCI), a corporation in the Eastern District of Missouri, and who deducted and collected from the total taxable wages of RFCI's employees federal income taxes and Federal Insurance Contributions Act taxes, did willfully fail to truthfully account for and pay over to the Internal Revenue Service all of the federal income taxes and Federal Insurance Contributions Act taxes withheld and due and owing to the United States of America in the amount of \$4,295.10 for the quarter ending September 30, 2009.

In violation of Title 26, United States Code, Section 7202.

COUNT 5

(FAILURE TO ACCOUNT FOR AND PAY OVER EMPLOYMENT TAX)

19. The allegations contained in paragraphs 1 through 11 of Count 1 of this Indictment are restated and incorporated herein.

20. On or about January 31, 2010, in the Eastern District of Missouri,

LUCINDA FRANEK,

the defendant, who was a resident of Beaufort, Missouri and the President of Rick Franek Contracting, Inc. (RFCI), a corporation in the Eastern District of Missouri, and who deducted and collected from the total taxable wages of RFCI's employees federal income taxes and Federal Insurance Contributions Act taxes, did willfully fail to truthfully account for and pay over to the Internal Revenue Service all of the federal income taxes and Federal Insurance Contributions Act taxes withheld and due and owing to the United States of America in the amount of \$18,434.97 for the quarter ending December 31, 2009.

In violation of Title 26, United States Code, Section 7202.

COUNT 6

(FAILURE TO PAY INCOME TAX)

The Grand Jury further charges that:

21. The allegations contained in paragraphs 1 through 11 of Count 1 of this Indictment are restated and incorporated herein.

22. During the calendar year 2006, in the Eastern District of Missouri, the defendant,

LUCINDA FRANEK,

who was a resident of Beaufort, Missouri, had and received taxable income of \$149,227, on which taxable income there was owing to the United States of America an income tax of \$19,259.04. She was required by law to pay, on or before April 15, 2007, that income tax to the Internal Revenue Service Center, at Kansas City, Missouri, to a person assigned to receive returns at the local office of the Internal Revenue Service at Kansas City, Missouri, or to another Internal Revenue Service office permitted by the Commissioner of Internal Revenue. Well knowing all of the foregoing, she did willfully fail, on April 15, 2007, in the Eastern District of Missouri and elsewhere, to pay the income tax due.

In violation of Title 26, United States Code, Section 7203.

COUNT 7

(FAILURE TO PAY INCOME TAX)

The Grand Jury further charges that:

23. The allegations contained in paragraphs 1 through 11 of Count 1 of this Indictment are restated and incorporated herein.

24. During the calendar year 2007, in the Eastern District of Missouri, the defendant,

LUCINDA FRANEK,

who was a resident of Beaufort, Missouri, had and received taxable income of \$200,147, on which taxable income there was owing to the United States of America an income tax of \$33,317. She was required by law to pay, on or before April 15, 2008, that income tax to the

Internal Revenue Service Center, at Kansas City, Missouri, to a person assigned to receive returns at the local office of the Internal Revenue Service at Kansas City, Missouri, or to another Internal Revenue Service office permitted by the Commissioner of Internal Revenue. Well knowing all of the foregoing, she did willfully fail, on April 15, 2008, in the Eastern District of Missouri and elsewhere, to pay the income tax due.

In violation of Title 26, United States Code, Section 7203.

COUNT 8

(FAILURE TO PAY INCOME TAX)

The Grand Jury further charges that:

25. The allegations contained in paragraphs 1 through 11 of Count 1 of this Indictment are restated and incorporated herein.
26. During the calendar year 2008, in the Eastern District of Missouri, the defendant,

LUCINDA FRANEK,

who was a resident of Beaufort, Missouri, had and received taxable income of \$73,941, on which taxable income there was owing to the United States of America an income tax of \$1,025. She was required by law to pay, on or before April 15, 2009, that income tax to the Internal Revenue Service Center, at Kansas City, Missouri, to a person assigned to receive returns at the local office of the Internal Revenue Service at Kansas City, Missouri, or to another Internal Revenue Service office permitted by the Commissioner of Internal Revenue. Well knowing all of the foregoing, she did willfully fail, on April 15, 2009, in the Eastern District of Missouri and elsewhere, to pay the income tax due.

In violation of Title 26, United States Code, Section 7203.

A TRUE BILL.

FOREPERSON

RICHARD G. CALLAHAN
United States Attorney

ANTHONY L. FRANKS, #50217MO
Assistant United States Attorney